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THE

AMERICAN LAW REGISTER.

JUNE, 1872.

FIELD'S INTERNATIONAL CODE.¹

By request of the British Association for the promotion of Social Science, Mr. DAVID DUDLEY FIELD has prepared the outlines of an International Code, which is intended to embody whatever is good in the present body of the public law, and also such alterations and amendments as seem desirable, to harmonize conflicting doctrines, and moderate harsh and oppressive rules. This work, after a careful and thorough revision and amendment, upon discussion at a future meeting of the Association, it is intended, shall be submitted to the leading civilized nations, in the hope of its being, at some time, by their special compact, in joint or concurrent treaties, received and adopted for the government of the nations, and their members in their relations with each other.

The code is divided into two books: The first, which is now published, treats of the relations of nations and of their members, in time of peace. The second, which it is understood will be published in a few months, will treat of the modifications in the relations of nations and of their members, produced by a state of war. In the first book, there are seven hundred and two articles; being concise statements of the principles of the law, classi-

¹ Outlines of an International Code, by DAVID DUDLEY FIELD; New York Diossy & Company, and Baker, Voorhis & Co.; 1872.

fied and arranged in systematic order. In the first part, are defined the sovereignty, equality, perpetuity, territory, property and domain of nations; the common rights of navigation, discovery, colonization and fishery; the intercourse of nations, and the rights and immunities of diplomatic agents; the right of asylum, and the duty of extradition. The second part contains the rules governing the relations of a nation to the persons and property of the members of other nations; for example, the rules as to national character, domicil, national jurisdiction; the rights of foreigners in respect of residence, occupation, religion and property; and their duties in respect to obedience to the laws, civil and military service, and taxation. Then follow uniform commercial regulations; for example, rules of navigation, restrictions as to imposts, the imposition and limit of quarantine, right of communication by telegraphs, protection of patents, trademarks and copyrights; embracing also systems of international currency, weights and measures, sea-signals, and rules for reckoning longitude and time, and provisions for the peaceful settlement of international disputes. The articles under the head of "Private International Law" declare the private rights of persons and property, embracing transfer, succession and will, and specify the obligations of contracts, and define the judicial power of nations in civil and criminal cases, the rules of procedure and evidence, and, finally, the rules as to divorce, bankruptcy and insolvency, and admiralty.

The greater part of the provisions are founded upon the settled usage of nations, upon treaties and judicial decisions of present authority, and the opinions of jurists; but such as are not statements of settled law are certainly dictated by justice and reason, as appears from the exposition following each article, of the principles upon which they are suggested. This necessarily brief review must fail to give a true conception of the comprehensive plan of the work, which exhibits in every part the various research and sound judgment of the learned author. The numerous alterations and amendments of the public law recommended by Mr. Field, will commend themselves to the attention of the public. For the opinions of public jurists "formed without prejudice, upon subjects which they have carefully studied, under circumstances the most favorable to an impartial judgment, cannot but be considered as entitled to the highest respect. The maxims laid down by them

are uninfluenced by national prejudices or particular interests; they reason upon great principles, and with enlarged views of the welfare of nations; and by comparing the results of their own reflections with the lessons taught by the experience of preceding ages, they establish that system which they consider as of the greatest utility, and of the most general application."

Among the important provisions recommended in the Code may be mentioned the following:—

As commerce is to be encouraged in every possible manner, it is intended to guard against interruptions thereto, and to recognise as a public offence "every act of plunder and violence on the high seas," committed by persons "free from lawful authority;" it is therefore provided, that, inmates of a private ship upon the high seas, who wilfully, and not in self-defence, destroy or seize by force any ship or its lading, or kill, wound, or seize by force, and abduct an inmate of another ship; and persons who without authority from the owner, and with intent to injure any person or nation, remove, destroy, disturb, obstruct or injure any oceanic telegraphic cable not their own, or any part thereof; or destroy or injure any international railway, canal, lighthouse, or any other structure or work, the perpetual neutrality of which has been declared; or, who beyond the territory of any nation reduce to slavery, or hold in slavery, any person whatever, or convey or receive with intent to convey, any person whatever as a slave, are deemed pirates, and outlaws—*hostes humani generis*—and without the protection of the law of nations; and subject to trial and punishment in any country in which they are found. And in order that all nations may be bound to act towards the uncivilized according to the same rules of justice and humanity which govern in their relations with the civilized, it is further provided that every human being, whether belonging to a civilized or uncivilized community, and with or without social or political ties, is under the protection of law, and if he does not belong to a nation having a recognised government, an injury to his person or property by a member of any nation, party to this Code, shall be deemed a violation of public law, and punishable as *piracy*.

And this rule illustrates the far-reaching authority of this law, and its governing and protecting power in every part of the globe.

Upon the principle that the common interests of all nations require the punishment of offences *mala in se*, and demand for that

purpose an exception to the general rule that the penal laws of a nation are local, and can have no aid from foreign powers; and because international comity has been found unreliable, and express stipulations necessary, for the extradition of fugitives from justice, it is provided that each nation must, on demand made by another nation, and at the latter's expense, deliver up to justice persons accused of certain enumerated crimes, when committed within the jurisdiction of the demanding nation, without any exception in favor of the members of the nation from whom surrender is claimed, though this exception has been generally recognised in the treaties. And, that while public policy demands of every country to repel malefactors, the law of hospitality and the general feelings of humanity forbid the surrender, and suffer all nations to be asylums of those driven from their country on account of crimes or offences of a purely political character; or for offences committed in furthering civil war, insurrection, or political commotion, which if committed between belligerents would not be crimes; or for deserting from, or evading their country's military or naval service.

As the conditions and effect of naturalization vary in different countries, the consequence of the fundamental principles of governments being different, and occasion a conflict of laws, whereby two nations may claim from a person at one and the same time the obligations of a citizen, the provisions of the Code recognise a national character in every person, and declare distinctly that no person can have two national characters; but it is permitted to any nation to extend to a member of another nation with his consent, the rights and duties of its own members, within its own jurisdiction, in addition to his own national character; or to suspend the rights and privileges of its own members, as provided by its constitution and laws. And it is declared that allegiance, or the obligation of fidelity and obedience which a person owes to the nation of which he is a member, or to its sovereign, may be extinguished by *expatriation* and a formal act of *renunciation*, a right which cannot be impaired or denied; that renunciation of allegiance to, and protection from, a nation ends its jurisdiction over a person naturalized by another nation; in short, that naturalization will effect an absolute and complete change of national character, though this is in direct conflict with the *old* English doctrine, and that also held by many of the conti-

mental nations of Europe, that allegiance is indefeasible,—*nemo potest exuere patriam*. And for the purpose of preventing the fraudulent practice of obtaining a naturalization, and subsequently attempting to enjoy the privileges of the previous national character, which is said to have greatly increased of late, it is suggested that every person upon whom naturalization is conferred be required, within a reasonable time thereafter, to send a copy of the record of naturalization to a public minister or consul of the nation to which he previously belonged, resident in the territory of the nation which thus adopts him, or the nation or sovereign which he has left may reclaim him.

The provisions of the Code also recognise the principle that men are entitled to be dealt with as free agents, so long as they do not disturb the peace of a community, and, therefore, deny the right of a nation to close the country to general commerce, or to interdict absolutely the entrance of foreigners into its territory; and allow, subject to the revenue, sanitary, and police laws of a country, the members of any nation with their families and property, freely, without passports, except in time of war, to enter, reside, and become domiciled in any other nation; to acquire real and personal property, to pursue any lawful occupation, and, without molestation, prejudice, or question, to conduct their religious worship according to their own convictions of duty; but they forbid disrespect toward the religion, laws, and established customs of the nation, and indulgence in practices inconsistent with the good order and safety of the state. Thus will be granted universal toleration, the American idea, which is calculated to make intercourse more catholic in spirit and generous, and thereby to remove prejudices, and even to prevent their formation. And this principle of equal rights for all will be extended still further, and the civil freedom of every human being, and his capacity of acquiring rights and exercising them, will be recognised; and the subjection of any person to slavery or involuntary servitude, except in punishment for crime, whereof the party shall have been duly convicted, will be prohibited.

There is also provided a system of regulations, which are founded not on questions of right and obligation, as the foregoing provisions are claimed to be, but on the convenience of having uniform rules for the facilitation of commercial and social intercourse. It is, for example, intended to encourage future con-

structions of telegraphs, by allowing, subject to the rights and obligations attaching to private property, the landing of submarine telegraphic cables on the shores of any nation, forbidding exclusive concessions, except on consent of both nations concerned, and relinquishing government scrutiny at either end of the line, except to allow a nation to interrupt the transmission of any despatch which appears to be dangerous to its security, or is contrary to its laws, to public order or to good morals. And the sending of *false* despatches, and unlawfully delaying the transmission, or violating the secrecy of despatches, are declared to be public offences, punishable by any nation.

It is also intended that the same protection which any nation shall give to its own members in respect to inventions, designs, and discoveries made within its limits, shall be extended upon the same terms and conditions to members of other nations, and to inventions, designs, and discoveries made in any other nation: And, that property in works of literature and art shall be recognised in favor of their authors; that, upon complying with the formalities prescribed by the law, the rights of any foreign author shall be protected by the laws of every nation, for a period not less than twenty-five years.

There are also provisions as to "money," "weights and measures," "longitude and time," and "sea-signals," prepared by FREDERICK A. P. BARNARD, LL.D., President of Columbia College, New York, to whom, it may be here remarked, is due all credit and praise for the careful research, abundant learning, acuteness of intellect, and elegance of diction, displayed in exposition of these subjects. It is provided that an international currency shall be established, of which the standard shall be *gold* only, of a fineness of nine parts of pure gold to one part of alloy; and the unit called a *dollar*, of the value of one and one-half grammes of fine gold, shall be a legal tender for payments of any amount at any place within the jurisdiction of any of the nations; and, that *silver* coins of the value of one dollar or any fraction thereof, consisting of nine parts of pure silver to one part of base metal, may be issued to facilitate the minor transactions of business. But coins of base metal shall not form a part of the international currency. As to "weights and measures," it is declared that the *metric* system shall be employed in transactions between members of different nations, in negotiations, treaties, and diplo-

matic communications between the governments of different nations, in levying customs-duties, and in the regulation of postal tariffs; but that it shall be lawful to use in ordinary transactions and descriptions, certain non-metrical denominations having metrical values. And as to "longitude and time," the proposed rules establish the meridian of Greenwich as the prime meridian; and provide that the Gregorian style of reckoning time shall be employed, and that the moment of mean solar meridian passage at Greenwich shall be that in which the day is of the same name throughout the world, whatever may be the degree of advancement of the day by local time, in different longitudes. And what is known as the "chronosemic method" of sea-signalling is recommended; which "consists in employing measured intervals of time as the significant symbols, and using audible or visible signals for the purpose only of marking the beginnings and endings of these intervals;" and which is deemed to possess the largest capabilities of usefulness, in that it is a matter of indifference by what means the beginning and ending of each interval is marked, so that the indication is distinct; it also admits of a large extension of the circle of available distance beyond the present limit, making it possible, for instance, by means of rockets or guns to convey messages between ships ten, fifteen, and even twenty miles apart.

The articles under the head of "Private International Law," respecting the relations between members of different nations, extend the jurisdiction of each nation over all transactions affecting the ownership of its own soil; and, subject to certain simple restrictions guarding against the use of the law of one place to sanction wrongful evasions of the law of another, or prejudicing creditors in another, over all transactions had within its limits, whether between citizens or foreigners, except such as affect the ownership of the soil of another nation. Thus opposing the ancient rule which maintains the sovereignty of the laws of a nation over the personal capacity and transactions of its own members, even when within the territory of another nation, requiring a citizen dealing with a foreigner to ascertain at his peril the fact of the foreigner's alienage, the nationality he bears, and the law of that nationality respecting the personal capacity of the foreigner. The effect of the provisions presented on the subject of "marriage," for instance, will be to except from the full effect

of the above rule, that the efficacy of a transaction depends on the law of the place where the transaction is had—polygamous and incestuous marriages, and these so far only as they would justify the maintenance of a personal relation within a jurisdiction which makes such relation a criminal offence.

And as a fitting consummation to this grand scheme for the amelioration of the public law, and the increased intercourse of nations, which it is essential for political prosperity to maintain, there are added “provisions for the preservation of peace,” by which in time of peace, the permanent military force of any nation will be limited to one soldier or marine for every thousand inhabitants. But any nation will be allowed to build and arm fortresses and ships of war, and to organize, arm, and for not more than one month in each year, drill all or any portion of its able-bodied men between twenty and forty years of age, as a force of militia, to be called into active service, when required, to enforce its laws, suppress insurrections against its authority, or repel invasions. And these equipments and military reserves are believed to be sufficient to place each nation in a position of independence and security, able to maintain its dignity at home, and ready to resist foreign aggressions. And it is further provided, that if any dissatisfaction arises between nations, a notice thereof shall be given by the aggrieved to the one of which it complains, with a claim of the redress sought, to which an explicit answer shall be made. And if the nations do not otherwise agree between themselves, they shall each appoint five members of a Joint High Commission, who shall meet together, discuss the differences, and endeavor to reconcile them, and within six months after their appointment, shall report the result to the nations appointing them, respectively. And when such commissioners fail to agree, or the nations fail to ratify their acts, there shall then be formed, in a manner detailed, a High Tribunal of Arbitration, whose decision upon the matter in controversy shall be final and conclusive. And if any nation shall begin a war in violation of these provisions, the other nations, parties to the Code, shall be pledged to resist the offending nation by force. The precedent set by the United States and Great Britain in leaving to arbitration the settlement of the several causes of dispute between them, generically known as the Alabama Claims, fully warrants the belief that nations will recognise the principle that

arguments and sound reasoning can overturn errors of political judgment, without the evils of a war; and that peaceful means will be hereafter adopted by Christian nations for the settlement of their differences, however just or large may be the demands contested. It may be true that nations would not always voluntarily submit their causes to arbitration, when their interests may have suffered by the wrongful acts of others, or their national pride been touched, and their claims for redress disputed. If, however, nations were united under some compact, which would give to them a control over the actions of each, as proposed in the above provisions of the Code, there would seem to be little reason to fear a violation of the obligation to submit their disputes to arbitration, even though public opinion in the aggrieved nation were inflamed to the very point of war; and there would then be laid a basis for the maintenance of peace among all the nations of the earth.

The foregoing examples of the provisions of the work, but imperfectly represent the spirit of the proposed reforms; it can be truly said that they are directed towards those interests, and seasoned with that large humanity and justice, which concern all men nearly. Whether it will receive the sanction of governments, or whether the provisions above mentioned will be made a part of the public law, remains to be known. With, however, the countenance and co-operation of the greatest jurists and statesmen of America, England, and the continent of Europe, which are enlisted in support of this scheme of an International Code, its success, and that of many of the proposed reforms, which promise so much good, must, it is believed, certainly be effected. Its present, practical, and vital effect in benefiting society must, alone, determine the expediency of having such a written public law. And this being determined, the desirability of a Code framed in the interests of peace, commerce, and civilization, in the spirit of that which is now presented to the public, must be acknowledged by all good and wise men. Such a compact of nations as is here proposed will, with certain restrictions, give to the members of every nation the enjoyment in foreign countries of all the rights which they have in their own; creating as it were a citizenship of the world; and, by the introduction of the knowledge and arts, of the agricultural, manufacturing, and mechanical improvements of every country, which will follow

civil and religious freedom, it will rapidly and greatly increase progress and improvement in the internal affairs of each nation. It will also introduce *certainly* into the law, as to international rights and duties, so far at least as written and positive language can save uncertainties; thus guarding individuals against unintended violations of the law, and tending to lessen the grounds of controversy between nations. It will also provide a tribunal to which nations shall be bound to refer matters of dispute, and which, with authority, will declare the principles upon which all rights and obligations are to be determined; and, by the annual conference of the representatives of nations for the discussion of the provisions of the public law, their amendment, and the facilitation of intercourse, which is provided for, will insure the definite settlement of the law on all new or disputed questions, and the reciprocal adoption of modifications and improvements, thus placing all nations "on the basis of complete reciprocity of right and equal justice" in all their relations with each other, giving to each nation only what it is prepared to concede to others in return; placing each under the protection of every other, and multiplying and strengthening, and preventing the destruction of ties which bind all together.

HOWARD PAYSON WILDS.

NEW YORK.

RECENT AMERICAN DECISIONS.

Supreme Court of Ohio.

WALKER v. CITY OF CINCINNATI.

It is settled in Ohio that independent of a constitutional prohibition, it is within the legitimate scope of legislative power to authorize a municipality to aid in the construction of a public improvement such as a railroad, by becoming a stockholder in a corporation created for that purpose, and to levy taxes to pay the subscription.

The public or corporate interest in an improvement rather than its particular location determines the question as to the right of taxation for its construction; and therefore the fact that the improvement contemplated will lie mainly outside of the state can make no difference.

The Constitution of Ohio provides that "The General Assembly shall never authorize any county, city, town, or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money or loan its credit to, or in aid of, any such com-